



The State of New Hampshire
Insurance Department
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Roger A. Sevigny
Commissioner

Alexander K. Feldvebel
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BULLETIN
Docket No.: INS No. 08-045-AB

TO: All New Hampshire Licensed Health Insurance Companies, Health Maintenance Organizations, Fraternal Benefit Societies and Third Party Administrators

FROM: Roger A. Sevigny
Insurance Commissioner

A handwritten signature in black ink, appearing to read "RAS", is placed over the name "Roger A. Sevigny" in the "FROM:" field.

DATE: June 26, 2008

RE: Implementation of SB 468

This bulletin is intended to provide guidance regarding the implementation of SB 468, which provided for the termination of coverage and wind down of the New Hampshire Small Employer Health Reinsurance Pool (hereinafter "reinsurance mechanism"). The bill also changed the definition of "covered lives" as that term applies to the assessment base that funds the New Hampshire Health Plan (hereinafter "high risk pool") and the New Hampshire Vaccine Association (hereinafter "vaccine association"). Questions have been raised concerning the construction of those provisions of SB 468 that expand the definition of "covered lives" for the vaccine association and the high risk pool.

SB 468 changed the definition of "covered lives" in RSA 404-G:2 (V)(d) to clarify that all lives protected by excess loss insurance issued to self-insured groups, regardless of whether those groups were subject to ERISA, should be included in the assessment base for the vaccine association and the high risk pool. The effect of this change was to include members covered by government, church plans, and multiple employer welfare arrangements, which are protected by excess loss insurance, in the assessment base. The bill also added a provision imposing annual reporting requirements on the vaccine association and the high risk pool. The annual report must provide the insurance commissioner with a current count of covered lives and a description of assessments and

deficiencies in the collection of assessments or inclusion of covered lives. In turn, the insurance commissioner is required to conduct an annual review of the assessment activity to ensure that assessments of the vaccine association and high risk pool include all covered lives and that all members of the two associations have paid their assessments in full. The expansion of the assessment base to include non-ERISA lives protected by excess loss insurance and the annual reporting requirement do not apply to funding of the wind down of the reinsurance mechanism.

SB 468 establishes two different definitions of the term “covered lives.” For the purpose of funding the vaccine association and the high risk pool, the term “covered lives” includes: 1) persons covered under an individual health insurance policy issued or delivered in New Hampshire; 2) persons covered under a group health insurance policy that is issued or delivered in New Hampshire; 3) persons covered under a group health insurance policy evidenced by a certificate of insurance where the certificate of insurance is issued or delivered in New Hampshire; and 4) persons protected, in part, by a group excess loss insurance policy where the policy or certificate of coverage has been issued or delivered in New Hampshire. For funding the remaining liabilities of the New Hampshire reinsurance mechanism, the term “covered lives” is more narrowly defined and does not include persons who receive coverage in non-ERISA plans that are protected by a group excess loss insurance policy.

The distinction in the definition of covered lives for the different mechanisms reflects the legislature’s intent to fairly allocate the cost of the respective programs among those who benefit from them. With regard to the vaccine association, all children, regardless of whether they are self-insured, fully insured, or uninsured, are entitled to free vaccines in New Hampshire. Because the vaccine association pays the cost of all vaccines, the expanded definition spreads this cost to all self-insured and fully-insured lives in New Hampshire. Similarly, the high-risk pool provides a safety-net that is available to all residents of New Hampshire who are unable to purchase insurance in the commercial market due to their health conditions. In contrast, the reinsurance mechanism targets a specific segment of New Hampshire’s group market and does not directly benefit the self-insured or uninsured population. The construction of the term “covered lives,” should be given the range of application intended by the legislature to effectuate the purposes of the statute.

The term “covered lives,” as it applies to the vaccine association and the high risk pool, includes four separate categories, each of which employs the phrase “issued or delivered in New Hampshire” in the definition. By bulletin issued on March 4, 2008, the Commissioner clarified that a certificate of group insurance will be deemed, as a matter of law, to be issued and delivered in New Hampshire when it covers employees who live and work at a business location in New Hampshire regardless of any other location that might be assigned to the master policy. This bulletin, read in conjunction with the definition of covered lives in RSA 420-G:2,VII (c), requires the inclusion of all lives associated with a New Hampshire business location in the assessment base.

Similarly, for lives protected by a group excess loss insurance policy, all self-insured lives associated with a New Hampshire business location must be included in the assessment base regardless of any other location that may be assigned to the master policy of excess loss insurance. The definition of the term “covered lives” for lives

protected by excess loss insurance includes those lives “protected, in part, by a group excess loss insurance policy, where the policy or certificate of coverage has been issued or delivered in New Hampshire.” RSA 404-G:2 (d). A question has been raised as to whether the legislature intended the phrase “where the policy or certificate of coverage has been issued or delivered in New Hampshire” to apply only to the place of issuance and delivery of the group excess loss insurance policy.

The legislative history shows a clear intent to include all self insured lives in the assessment base that directly benefit from free vaccines and the availability of health coverage from the high risk pool. To give application to the intent of the legislature, the phrase referencing the delivery of a certificate of coverage must be interpreted as including the place of delivery of the certificate of coverage for the underlying self-insurance coverage. The specific language used in RSA 404-G:2(d) supports this construction. In contrast with the other sections of the bill, the definition of covered lives for self-insurance purposes references the delivery of both a policy and certificate of coverage. Unlike the other definitions of “covered lives” for fully insured persons, the section related to self-insured lives does not use the word “insurance” in reference to the issuance or delivery of a certificate. The omission of the word “insurance” suggests that the legislature intended the phrase to refer to certificates issued and delivered to self-insured persons. Accordingly, all persons who are employed at a New Hampshire business location and who are protected by a policy of excess loss insurance must be included in the assessment base.